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House of Representatives
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Second Regular Session
2004

CHAPTER 165

HOUSE BILL 2438

AN ACT

AMENDING SECTIONS 20-448.01, 23-908, 23-1021, 23-1043.02, 23-1043.03, 23-1061
AND 36-664, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-448.01, Arizona Revised Statutes, is amended to
3 read:

4 20-448.01. Required insurance procedures relating to HIV
5 information; confidentiality; violations;
6 penalties; definitions

7 A. In this section unless the context otherwise requires:

8 1. "Confidential HIV-related information" means information concerning
9 whether a person has had an HIV-related test or has HIV infection,
10 HIV-related illness or acquired immune deficiency syndrome and includes
11 information which identifies or reasonably permits identification of that
12 person or the person's contacts.

13 2. "HIV" means the human immunodeficiency virus.

14 3. "HIV-related test" means a laboratory test or series of tests for
15 the virus, components of the virus or antibodies to the virus thought to
16 indicate the presence of HIV infection.

17 4. "Protected person" means a person who takes an HIV-related test or
18 who has been diagnosed as having HIV infection, acquired immune deficiency
19 syndrome or HIV-related illness.

20 5. "Person" includes all entities subject to regulation under title
21 20, the employees, contractors and agents thereof, and anyone performing
22 insurance related tasks for such entities, employees, contractors or agents.

23 B. Except as otherwise specifically authorized or required by this
24 state or by federal law, no person may require the performance of, or perform
25 an HIV-related test without first receiving the specific written informed
26 consent of the subject of the test who has capacity to consent or, if the
27 subject lacks capacity to consent, of a person authorized pursuant to law to
28 consent for that person. Written consent shall be in a form as prescribed
29 by the director.

30 C. No person who obtains confidential HIV-related information in the
31 course of processing insurance information or insurance applications or
32 pursuant to a release of confidential HIV-related information may disclose
33 or be compelled to disclose that information except to the following:

34 1. The protected person or, if the protected person lacks capacity to
35 consent, a person authorized pursuant to law to consent for the protected
36 person.

37 2. A person to whom disclosure is authorized in writing pursuant to
38 a release as set forth in subsection E of this section, including but not
39 limited to a physician designated by the insured or a medical information
40 exchange for insurers operated under procedures intended to ensure
41 confidentiality, provided that in the case of a medical information exchange:

42 (a) The insurer will not report that blood tests of an applicant
43 showed the presence of the AIDS virus antibodies, but only that unspecified
44 blood test results were abnormal.

1 (b) Reports must use a general code that also covers results of tests
2 for many diseases or conditions, such as abnormal blood counts that are not
3 related to HIV, AIDS, AIDS related complex or similar diseases.

4 3. A government agency specifically authorized by law to receive the
5 information. The agency is authorized to redisclose the information only
6 pursuant to this section or as otherwise permitted by law.

7 4. A person regulated by this title to which disclosure is ordered by
8 a court or administrative body pursuant to section 36-665.

9 5. The industrial commission or parties to an industrial commission
10 claim pursuant to the provisions of section 23-908, subsection C- D and
11 section 23-1043.02.

12 D. Test results and application responses may be shared with the
13 underwriting departments of the insurer and reinsurers, or to those
14 contractually retained medical personnel, laboratories, and insurance
15 affiliates, excluding agents and brokers, which are involved in underwriting
16 decisions regarding the individual's application if disclosure is reasonably
17 necessary to make the underwriting decision regarding such application, and
18 claims information may be shared with claims personnel and attorneys
19 reviewing claims if disclosure is reasonably necessary to process and resolve
20 claims.

21 E. A release of confidential HIV-related information pursuant to
22 subsection C, paragraph 2 of this section shall be signed by the protected
23 person or, if the protected person lacks capacity to consent, a person
24 authorized pursuant to law to consent for the protected person. A release
25 shall be dated and shall specify to whom disclosure is authorized, the
26 purpose for disclosure and the time period during which the release is
27 effective. A general authorization for the release of medical or other
28 information is not a release of confidential HIV-related information unless
29 the authorization specifically indicates its purpose as a general
30 authorization and an authorization for the release of confidential
31 HIV-related information and complies with the requirements of this section.

32 F. A person to whom confidential HIV-related information is disclosed
33 pursuant to this section shall not disclose the information to another person
34 except as authorized by this section. This subsection does not apply to the
35 protected person or a person who is authorized pursuant to law to consent for
36 the protected person.

37 G. If a disclosure of confidential HIV-related information is made
38 pursuant to the provisions of a written release as permitted by subsection
39 C, paragraph 2 of this section, the disclosure shall be accompanied by a
40 statement in writing which warns that the information is from confidential
41 records which are protected by state law that prohibits further disclosure
42 of the information without the specific written consent of the person to whom
43 it pertains or as otherwise permitted by law.

44 H. The person making a disclosure in accordance with subsection C,
45 paragraphs 3, 4 and 5, and subsection G of this section shall keep a record

1 of all disclosures for the time period prescribed by the director. On
2 request, a protected person or his legal representative shall have access to
3 the record.

4 I. Except as otherwise provided pursuant to this section or subject
5 to an order or search warrant issued pursuant to section 36-665, no person
6 who receives confidential HIV-related information pursuant to a release of
7 confidential HIV-related information may disclose that information to another
8 person or legal entity or be compelled by subpoena, order, search warrant or
9 other judicial process to disclose that information to another person or
10 legal entity.

11 J. The director shall adopt rules to implement the allowable tests and
12 testing procedures, written consent to perform a human immunodeficiency virus
13 related test, procedures for confidentiality and disclosure of medical
14 information and procedures for gathering underwriting information and may
15 adopt additional rules reasonable and necessary to implement this section.

16 K. Notwithstanding any other provision of law to the contrary, nothing
17 in this section shall be interpreted to restrict the director's authority to
18 full access to records of any entity subject to regulation under title 20,
19 including but not limited to all records containing confidential HIV-related
20 information. The director may only redisclose confidential HIV-related
21 information in accordance with this section.

22 L. A protected person, whose rights provided in this section have been
23 violated by a person or entity described in subsection A, paragraph 5 of this
24 section, has those individual remedies specified in section 20-2118 against
25 such a person or entity.

26 Sec. 2. Section 23-908, Arizona Revised Statutes, is amended to read:

27 23-908. Injury reports by employer and physician; schedule of
28 fees; violation; classification

29 A. Every employer affected by the provisions of this chapter, and
30 every physician who attends an injured employee of such employer, shall file
31 with the commission and the employer's insurance carrier from time to time
32 a full and complete report of every known injury to the employee arising out
33 of or in the course of his employment and resulting in loss of life or
34 injury. Such report shall be furnished to the commission and such insurance
35 carrier at times and in the form and detail the commission prescribes, and
36 the report shall make special answers to all questions required by the
37 commission under its rules.

38 B. The commission shall fix a schedule of fees to be charged by
39 physicians, physical therapists or occupational therapists attending injured
40 employees, ~~which~~ AND, SUBJECT TO SUBSECTION C OF THIS SECTION, FOR
41 PRESCRIPTION MEDICINES REQUIRED TO TREAT AN INJURED EMPLOYEE UNDER THIS
42 CHAPTER. THE COMMISSION shall be reviewed annually by the commission REVIEW
43 THE SCHEDULE OF FEES.

44 C. IF A SCHEDULE OF FEES FOR PRESCRIPTION MEDICINES ADOPTED PURSUANT
45 TO SUBSECTION B OF THIS SECTION INCLUDES PROVISIONS REGARDING THE USE OF

1 GENERIC EQUIVALENT DRUGS, THOSE PROVISIONS SHALL COMPLY WITH SECTION
2 32-1963.01, SUBSECTIONS A AND C THROUGH K. IF THE COMMISSION CONSIDERS THE
3 ADOPTION OF FEE SCHEDULE PROVISIONS THAT INVOLVE SPECIFIC PRICES, VALUES OR
4 REIMBURSEMENTS FOR PRESCRIPTION DRUGS, THE COMMISSION SHALL BASE THE ADOPTION
5 ON STUDIES OR PRACTICES THAT ARE VALIDATED AND ACCEPTED IN THE INDUSTRY,
6 INCLUDING THE APPLICABILITY OF FORMULAS THAT USE AVERAGE WHOLESALE PRICE,
7 PLUS A DISPENSING FEE, AND THAT HAVE BEEN MADE PUBLICLY AVAILABLE FOR AT
8 LEAST ONE HUNDRED EIGHTY DAYS BEFORE ANY HEARING CONDUCTED BY THE COMMISSION.

9 ~~C.~~ D. Notwithstanding section 12-2235, information obtained by any
10 physician or surgeon examining or treating an injured person shall not be
11 considered a privileged communication, if such information is requested by
12 interested parties for a proper understanding of the case and a determination
13 of the rights involved. Hospital records of an employee concerning an
14 industrial claim shall not be considered privileged if requested by an
15 interested party in order to determine the rights involved. Medical
16 information from any source pertaining to conditions unrelated to the pending
17 industrial claim shall remain privileged.

18 ~~D.~~ E. When an accident occurs to an employee, the employee shall
19 forthwith report the accident and the injury resulting therefrom to the
20 employer, and any physician employed by the injured employee shall forthwith
21 report the accident and the injury resulting therefrom to the employer, the
22 insurance carrier and the commission.

23 ~~E.~~ F. When an accident occurs to an employee, the employer may
24 designate in writing a physician chosen by the employer, who shall be
25 permitted by the employee, or any person in charge of the employee, to make
26 one examination of the injured employee in order to ascertain the character
27 and extent of the injury occasioned by the accident. The physician so chosen
28 shall forthwith report to the employer, the insurance carrier and the
29 commission the character and extent of the injury as ascertained by him. If
30 the accident is not reported by the employee or his physician forthwith, as
31 required, or if the injured employee or those in charge of him refuse to
32 permit the employer's physician to make the examination, and the injured
33 employee is a party to the refusal, no compensation shall be paid for the
34 injury claimed to have resulted from the accident. The commission may
35 relieve the injured person or his dependents from the loss or forfeiture of
36 compensation if it believes after investigation that the circumstances
37 attending the failure on the part of the employee or his physician to report
38 the accident and injury are such as to have excused them.

39 ~~F.~~ G. Within ten days after receiving notice of an accident, the
40 employer shall inform his insurance carrier and the commission on such forms
41 and in such manner as may be prescribed by the commission.

42 ~~G.~~ H. Immediately upon notice to the employer of an accident
43 resulting in an injury to an employee, the employer shall provide the
44 employee with the name and address of the employer's insurance carrier, the
45 policy number, and the expiration date.

1 H. I. Any person failing or refusing to comply with the provisions
2 of this section is guilty of a petty offense.

3 Sec. 3. Section 23-1021, Arizona Revised Statutes, is amended to read:
4 23-1021. Right of employee to compensation; definitions

5 A. Every employee coming within the provisions of this chapter who is
6 injured, and the dependents of every such employee who is killed by accident
7 arising out of and in the course of his employment, wherever the injury
8 occurred, unless the injury was purposely self-inflicted, shall be entitled
9 to receive and shall be paid such compensation for loss sustained on account
10 of the injury or death, such medical, nurse and hospital services and
11 medicines, and such amount of funeral expenses in the event of death, as are
12 provided by this chapter.

13 B. Every employee who is covered by insurance in the state
14 compensation fund and who is injured by accident arising out of and in the
15 course of employment, and the dependents of every such employee who is
16 killed, provided the injury was not purposely self-inflicted, shall be paid
17 such compensation from the state compensation fund for loss sustained on
18 account of the injury and shall receive such medical, nurse and hospital
19 services and medicines, and such amount of funeral expenses in event of
20 death, as provided in this chapter.

21 C. An employee's injury or death shall not be considered a personal
22 injury by accident arising out of and in the course of employment and is not
23 compensable pursuant to this chapter if the impairment of the employee is due
24 to the employee's use of alcohol or the unlawful use of any controlled
25 substance proscribed by title 13, chapter 34 and is a substantial
26 contributing cause of the employee's personal injury or death. This
27 subsection does not apply if the employer had actual knowledge of and
28 permitted, or condoned, the employee's use of alcohol or the unlawful use of
29 the controlled substance proscribed by title 13, chapter 34.

30 D. Notwithstanding subsection C of this section, if the employer has
31 established a policy of drug testing or alcohol impairment testing in
32 accordance with chapter 2, article 14 of this title, is maintaining that
33 policy on an ongoing manner and, before the date of the employee's injury,
34 the employer files the written certification with the industrial commission
35 as required by subsection F of this section, an employee's injury or death
36 shall not be considered a personal injury by accident arising out of and in
37 the course of employment and is not compensable pursuant to this chapter, if
38 the employee of such an employer fails to pass, refuses to cooperate with or
39 refuses to take a drug test for the unlawful use of any controlled substance
40 proscribed by title 13, chapter 34 or fails to pass, refuses to cooperate
41 with or refuses to take an alcohol impairment test that is administered by
42 or at the request of the employer not more than twenty-four hours after the
43 employer receives actual notice of the injury, unless the employee proves any
44 of the following:

1 1. The employee's use of alcohol or the employee's use of any unlawful
2 substance proscribed by title 13, chapter 34 was not a contributing cause of
3 the employee's injury or death.

4 2. The alcohol impairment test indicates that the employee's alcohol
5 concentration was lower than the alcohol concentration that would constitute
6 a violation of section 28-1381, subsection A and would not create a
7 presumption that the employee was under the influence of intoxicating liquor
8 pursuant to section 28-1381, subsection G.

9 3. The drug test or alcohol impairment test used cutoff levels for the
10 presence of alcohol, drugs or metabolites that were lower than the cutoff
11 levels prescribed at the time of the testing for transportation workplace
12 drug and alcohol testing programs under 49 Code of Federal Regulations part
13 40.

14 E. Subsection D of this section does not apply if the employer had
15 actual knowledge of and permitted or condoned the employee's use of alcohol
16 or the employee's unlawful use of any controlled substance proscribed by
17 title 13, chapter 34.

18 F. An employer that establishes a policy of drug testing or alcohol
19 impairment testing in accordance with chapter 2, article 14 of this title
20 shall file a written certification to that effect with the industrial
21 commission and provide notification to its employees in a manner consistent
22 with section 23-493.04, subsection A that the employer is maintaining that
23 policy.

24 G. Nothing contained in this section shall be construed to enhance or
25 expand the reporting requirements prescribed in section 23-908, subsection
26 D- E.

27 H. For the purposes of this section:

28 1. "Refuses to cooperate" means that the employee engages in any act
29 or omission that impedes the ability of the employer, the insurance carrier
30 or the agents of the employer or insurance carrier to obtain an accurate
31 result on a drug test or an alcohol impairment test.

32 2. "Substantial contributing cause" means anything more than a slight
33 contributing cause.

34 Sec. 4. Section 23-1043.02, Arizona Revised Statutes, is amended to
35 read:

36 23-1043.02. Human immunodeficiency virus; establishing
37 exposure; definition

38 A. A claim for a condition, infection, disease or disability involving
39 or related to the human immunodeficiency virus or acquired immune deficiency
40 syndrome shall include the occurrence of a significant exposure as defined
41 in this section and, except as provided in subsection B of this section,
42 shall be processed and determined under the provisions of this chapter and
43 applicable principles of law.

44 B. Notwithstanding any other law, an employee who satisfies the
45 following conditions presents a prima facie claim for a condition, infection,

1 disease or disability involving or related to the human immunodeficiency
2 virus or acquired immune deficiency syndrome if the medical evidence shows
3 to a reasonable degree of medical probability that the employee sustained a
4 significant exposure within the meaning of this section:

5 1. The employee's regular course of employment involves handling or
6 exposure to blood or body fluids, other than tears, saliva or perspiration,
7 including health care providers as defined in title 36, chapter 6, article
8 4, forensic laboratory workers, fire fighters, law enforcement officers,
9 emergency medical technicians, paramedics and correctional officers.

10 2. Within ten calendar days after a possible significant exposure
11 which arises out of and in the course of his employment, the employee reports
12 in writing to the employer the details of the exposure. The employer shall
13 notify its insurance carrier or claims processor of the report. Failure of
14 the employer to notify the insurance carrier is not a defense to a claim by
15 the employee.

16 3. The employee has blood drawn within ten days after the possible
17 significant exposure, the blood is tested for the human immunodeficiency
18 virus by antibody testing within thirty days after the exposure and the test
19 results are negative.

20 4. The employee is tested or diagnosed, according to clinical
21 standards established by the centers for disease control of the United States
22 public health service, as positive for the presence of the human
23 immunodeficiency virus within eighteen months after the date of the possible
24 significant exposure.

25 C. On presentation or showing of a prima facie claim under this
26 section, the employer may produce specific, relevant and probative evidence
27 to dispute the underlying facts, to contest whether the exposure was
28 significant as defined in this section, or to establish an alternative
29 significant exposure involving the presence of the human immunodeficiency
30 virus.

31 D. A person alleged to be a source of a significant exposure shall not
32 be compelled by subpoena or other court order to release confidential human
33 immunodeficiency virus related information either by document or by oral
34 testimony. Evidence of the alleged source's human immunodeficiency virus
35 status may be introduced by either party if the alleged source knowingly and
36 willingly consents to the release of that information.

37 E. Notwithstanding title 36, chapter 6, article 4, medical information
38 regarding the employee obtained by a physician or surgeon is subject to the
39 provisions of section 23-908, subsection C- D.

40 F. The commission by rule shall prescribe requirements and forms
41 regarding employee notification of the requirements of this section and the
42 proper documentation of a significant exposure.

43 G. For the purposes of this section, "significant exposure" means
44 contact of an employee's ruptured or broken skin or mucous membrane with a
45 person's blood or body fluids, other than tears, saliva or perspiration, of

1 a magnitude that the centers for disease control have epidemiologically
2 demonstrated can result in transmission of the human immunodeficiency
3 virus. For purposes of filing a claim under this section, significant
4 exposure does not include sexual activity or illegal drug use.

5 Sec. 5. Section 23-1043.03, Arizona Revised Statutes, is amended to
6 read:

7 23-1043.03. Hepatitis C; establishing exposure; definition

8 A. A claim for a condition, infection, disease or disability involving
9 or related to hepatitis C shall include the occurrence of a significant
10 exposure as defined in this section and, except as provided in subsection B
11 of this section, shall be processed and determined under this chapter and
12 applicable principles of law.

13 B. Notwithstanding any other law, an employee who satisfies the
14 following conditions presents a prima facie claim for a condition, infection,
15 disease or disability involving or related to hepatitis C if the medical
16 evidence shows to a reasonable degree of medical probability that the
17 employee sustained a significant exposure within the meaning of this section:

18 1. The employee's regular course of employment involves handling of
19 or exposure to blood or body fluids, other than tears, saliva or
20 perspiration, including health care providers as defined in section 36-661,
21 forensic laboratory workers, fire fighters, law enforcement officers,
22 emergency medical technicians, paramedics and correctional officers.

23 2. Within ten calendar days after a possible significant exposure that
24 arises out of and in the course of his employment, the employee reports in
25 writing to the employer the details of the exposure. The employer shall
26 notify its insurance carrier or claims processor of the report. Failure of
27 the employer to notify the insurance carrier is not a defense to a claim by
28 the employee.

29 3. The employee has blood drawn within ten days after the possible
30 significant exposure, the blood is tested for hepatitis C by antibody testing
31 within thirty days after the exposure and the test results are negative.

32 4. The employee is tested or diagnosed, according to clinical
33 standards established by the centers for disease control of the United States
34 public health service, as positive for the presence of hepatitis C within
35 seven months after the date of the possible significant exposure.

36 C. On presentation or showing of a prima facie claim under this
37 section, the employer may produce specific, relevant and probative evidence
38 to dispute the underlying facts, to contest whether the exposure was
39 significant as defined in this section, or to establish an alternative
40 significant exposure involving the presence of hepatitis C.

41 D. A person alleged to be a source of a significant exposure shall not
42 be compelled by subpoena or other court order to release confidential
43 hepatitis C related information either by document or by oral
44 testimony. Evidence of the alleged source's hepatitis C status may be

1 introduced by either party if the alleged source knowingly and willingly
2 consents to the release of that information.

3 E. Notwithstanding title 36, chapter 6, article 4, medical information
4 regarding the employee obtained by a physician or surgeon is subject to
5 section 23-908, subsection C- D.

6 F. The commission by rule shall prescribe requirements and forms
7 regarding employee notification of the requirements of this section and the
8 proper documentation of a significant exposure.

9 G. For the purposes of this section, "significant exposure" means
10 contact of an employee's ruptured or broken skin or mucous membrane or other
11 significant unbroken surface area with a person's blood or body fluids, other
12 than tears, saliva or perspiration, of a magnitude that the centers for
13 disease control have epidemiologically demonstrated can result in
14 transmission of hepatitis C. For purposes of filing a claim under this
15 section, significant exposure does not include sexual activity or illegal
16 drug use.

17 Sec. 6. Section 23-1061, Arizona Revised Statutes, is amended to read:

18 23-1061. Notice of accident; form of notice; claim for
19 compensation; reopening; payment of compensation

20 A. Notwithstanding section 23-908, subsection D- E, no claim for
21 compensation shall be valid or enforceable unless the claim is filed with the
22 commission by the employee, or if resulting in death by the parties entitled
23 to compensation, or someone on their behalf, in writing within one year after
24 the injury occurred or the right thereto accrued. The time for filing a
25 compensation claim begins to run when the injury becomes manifest or when the
26 claimant knows or in the exercise of reasonable diligence should know that
27 the claimant has sustained a compensable injury. Except as provided in
28 subsection B of this section, neither the commission nor any court shall have
29 jurisdiction to consider a claim which is not timely filed under this
30 subsection, except if the employee or other party entitled to file the claim
31 has delayed in doing so because of justifiable reliance on a material
32 representation by the commission, employer or insurance carrier or if the
33 employee or other party entitled to file the claim is insane or legally
34 incompetent or incapacitated at the time the injury occurs or the right to
35 compensation accrues or during the one-year period thereafter. If the
36 insanity or legal incompetence or incapacity occurs after the one-year period
37 has commenced, the running of the remainder of the one-year period shall be
38 suspended during the period of insanity or legal incompetence or incapacity.
39 If the employee or other party is insane or legally incompetent or
40 incapacitated when the injury occurs or the right to compensation accrues,
41 the one-year period commences to run immediately upon the termination of
42 insanity or legal incompetence or incapacity. The commission upon receiving
43 a claim shall give notice to the carrier.

44 B. Failure of an employee or any other party entitled to compensation
45 to file a claim with the commission within one year or to comply with section

1 23-908 shall not bar a claim if the insurance carrier or employer has
2 commenced payment of compensation benefits under section 23-1044, 23-1045 or
3 23-1046, except that the payments provided for by section 23-1046, subsection
4 A, paragraph 1 and section 23-1065, subsection A shall not be considered
5 compensation benefits for the purposes of this section.

6 C. If the commission receives a notification of the injury, the
7 commission shall send a claim form to the employee.

8 D. The issue of failure to file a claim must be raised at the first
9 hearing on a claim for compensation in respect to the injury or death.

10 E. Within ten days after receiving notice of an accident, the employer
11 shall inform his insurance carrier and the commission on such forms as may
12 be prescribed by the commission.

13 F. Each insurance carrier and self-insuring employer shall report to
14 the commission a notice of the first payment of compensation and shall
15 promptly report to the commission and to the employee by mail at his last
16 known address any denial of a claim, any change in the amount of compensation
17 and the termination thereof, except that claims for medical, surgical and
18 hospital benefits which are not denied shall be reported to the commission
19 in the form and manner determined by the commission. In all cases where
20 compensation is payable, the carrier or self-insuring employer shall promptly
21 determine the average monthly wage pursuant to section 23-1041. Within
22 thirty days of the payment of the first installment of compensation, the
23 carrier or self-insuring employer shall notify the employee and commission
24 of the average monthly wage of the claimant as calculated, and the basis for
25 such determination. The commission shall then make its own independent
26 determination of the average monthly wage pursuant to section 23-1041. The
27 commission shall within thirty days after receipt of such notice notify the
28 employee, employer and carrier of such determination. The amount determined
29 by the commission shall be payable retroactive to the first date of
30 entitlement. The first payment of compensation shall be accompanied by a
31 notice on a form prescribed by the commission stating the manner in which the
32 amount of compensation was determined.

33 G. Except as otherwise provided by law, the insurance carrier or
34 self-insuring employer shall process and pay compensation and provide
35 medical, surgical and hospital benefits, without the necessity for the making
36 of an award or determination by the commission.

37 H. An employee may reopen the employee's claim to secure an increase
38 or rearrangement of compensation or additional benefits by filing with the
39 commission a petition requesting the reopening of the employee's claim upon
40 the basis of a new, additional or previously undiscovered temporary or
41 permanent condition, which petition shall be accompanied by a statement from
42 a physician setting forth the physical condition of the employee relating to
43 the claim. A claim shall not be reopened because of increased subjective
44 pain if the pain is not accompanied by a change in objective physical
45 findings. A claim shall not be reopened solely for additional diagnostic or

1 investigative medical tests, but expenses for any reasonable and necessary
2 diagnostic or investigative tests that are causally related to the injury
3 shall be paid by the employer or the employer's insurance carrier. Expenses
4 for reasonable and necessary medical and hospital care and laboratory work
5 shall be paid by the employer or the employer's insurance carrier if the
6 claim is reopened as provided by law and if these expenses are incurred
7 within fifteen days of the date that the petition to reopen is filed. The
8 payment for such reasonable and necessary medical, hospital and laboratory
9 work expense shall be paid for by the employer or the employer's insurance
10 carrier if the claim is reopened as provided by law and if such expenses are
11 incurred within fifteen days of the filing of the petition to reopen.
12 Surgical benefits are not payable for any period prior to the date of filing
13 a petition to reopen, except that surgical benefits are payable for a period
14 prior to the date of filing the petition to reopen not to exceed seven days
15 if a bona fide medical emergency precludes the employee from filing a
16 petition to reopen prior to the surgery. No monetary compensation is payable
17 for any period prior to the date of filing the petition to reopen.

18 I. Upon the filing of a petition to reopen a claim the commission
19 shall in writing notify the employer's insurance carrier or the self-insuring
20 employer, which shall in writing notify the commission and the employee
21 within twenty-one days after the date of such notice of its acceptance or
22 denial of the petition. The reopened claim shall be processed thereafter in
23 like manner as a new claim.

24 J. The commission shall investigate and review any claim in which it
25 appears to the commission that the claimant has not been granted the benefits
26 to which such claimant is entitled. If the commission determines that
27 payment or denial of compensation is improper in any way, it shall hold a
28 hearing pursuant to section 23-941 within sixty days after receiving notice
29 of such impropriety.

30 K. When there is a dispute as to which employer, or insurance carrier,
31 is liable for the payment of a compensable claim, the commission may, by
32 order, designate the employer or insurance carrier which shall pay the claim.

33 Payment shall begin within fourteen days after the employer or insurance
34 carrier has been ordered by the commission to commence payment. When a final
35 determination has been made as to which employer or insurance carrier is
36 actually liable, the commission shall direct any necessary monetary
37 adjustment or reimbursement among the parties or carriers involved.

38 L. Upon application to the commission, and for good cause shown, the
39 commission may direct that a document filed as a claim for compensation
40 benefits be designated as a petition to reopen, effective as of the original
41 date of filing. In like manner upon application and good cause shown the
42 commission may direct that a document filed as a petition to reopen be
43 designated a claim for compensation benefits, effective as of the original
44 date of filing.

1 M. If the insurance carrier or self-insurer does not issue a notice
2 of claim status denying the claim within twenty-one days from the date the
3 carrier is notified by the commission of a claim or of a petition to reopen,
4 the carrier shall pay immediately compensation as if the claim were accepted,
5 from the date the carrier is notified by the commission of a claim or
6 petition to reopen until the date upon which the carrier issues a notice of
7 claim status denying such claim. Compensation includes medical, surgical and
8 hospital benefits. This section shall not apply to cases involving seven
9 days or less of time lost from work.

10 Sec. 7. Section 36-664, Arizona Revised Statutes, is amended to read:

11 36-664. Confidentiality; exceptions

12 A. A person who obtains confidential communicable disease related
13 information in the course of providing a health service or pursuant to a
14 release of confidential communicable disease related information shall not
15 disclose or be compelled to disclose that information except to the
16 following:

17 1. The protected person or, if the protected person lacks capacity to
18 consent, a person authorized pursuant to law to consent to health care for
19 the person.

20 2. A person to whom disclosure is authorized pursuant to subsection
21 D of this section or as otherwise allowed by law.

22 3. An agent or employee of a health facility or health care provider
23 if the agent or employee is authorized to access medical records, the health
24 facility or health care provider itself is authorized to obtain the
25 communicable disease related information and the agent or employee provides
26 health care to the protected individual or maintains or processes medical
27 records for billing or reimbursement.

28 4. A health care provider or health facility if knowledge of the
29 communicable disease related information is necessary to provide appropriate
30 care or treatment to the protected person or the person's child.

31 5. A health facility or health care provider, in relation to the
32 procurement, processing, distributing or use of a human body or a human body
33 part, including organs, tissues, eyes, bones, arteries, blood, semen, milk
34 or other body fluids, for use in medical education, research or therapy or
35 for transplantation to another person.

36 6. A health facility, or an organization, committee or individual
37 designated by the health facility, engaged in the review of professional
38 practices, including the review of the quality, utilization or necessity of
39 medical care, or an accreditation or oversight review organization
40 responsible for the review of professional practices at a health
41 facility. Confidential communicable disease related information disclosed
42 to these organizations, committees or individuals shall include only that
43 information necessary for the authorized review and shall not include
44 information directly identifying the protected person.

1 7. A federal, state, county or local health officer if disclosure is
2 mandated by federal or state law.

3 8. A government agency specifically authorized by law to receive the
4 information. The agency is authorized to redisclose the information only
5 pursuant to this article or as otherwise permitted by law.

6 9. A person, health care provider or health care facility to which
7 disclosure is ordered by a court or administrative body pursuant to section
8 36-665.

9 10. The department of economic security in conjunction with the
10 placement of children for adoption.

11 11. The industrial commission or parties to an industrial commission
12 claim pursuant to the provisions of section 23-908, subsection ~~C~~ D and
13 SECTION 23-1043.02.

14 12. Insurance entities pursuant to section 20-448.01.

15 B. A state, county or local health department or officer may disclose
16 confidential communicable disease related information if the disclosure is
17 any of the following:

18 1. Specifically authorized or required by federal or state law.

19 2. Made pursuant to a release of confidential communicable disease
20 related information.

21 3. Made to a contact of the protected person. The disclosure shall
22 be made without identifying the protected person.

23 4. For the purposes of research.

24 C. The director may authorize the release of information that
25 identifies the protected person to the national center for health statistics
26 of the United States public health service for the purposes of conducting a
27 search of the national death index.

28 D. The department or a local health department shall disclose
29 confidential communicable disease related information to a good Samaritan who
30 submits a request to the department or the local health department. The
31 request shall document the occurrence of the accident, fire or other
32 life-threatening emergency and shall include information regarding the nature
33 of the significant exposure risk. The department shall adopt rules that
34 prescribe standards of significant exposure risk based on the best available
35 medical evidence. The department shall adopt rules that establish procedures
36 for processing requests from good Samaritans pursuant to this
37 subsection. The rules shall provide that the disclosure to the good
38 Samaritan shall not reveal the protected person's name and shall be
39 accompanied by a written statement that warns the good Samaritan that the
40 confidentiality of the information is protected by state law.

41 E. A release of confidential communicable disease related information
42 shall be signed by the protected person or, if the protected person lacks
43 capacity to consent, a person authorized pursuant to law to consent to health
44 care for the person. A release shall be dated and shall specify to whom
45 disclosure is authorized, the purpose for disclosure and the time period

1 during which the release is effective. A general authorization for the
2 release of medical or other information, including confidential communicable
3 disease related information, is not an authorization for the release of
4 confidential HIV-related information unless the authorization specifically
5 indicates its purpose as a general authorization and an authorization for the
6 release of confidential HIV-related information and complies with the
7 requirements of this section.

8 F. A person to whom confidential communicable disease related
9 information is disclosed pursuant to this section shall not disclose the
10 information to another person except as authorized by this section. This
11 subsection does not apply to the protected person or a person who is
12 authorized pursuant to law to consent to health care for the protected
13 person.

14 G. If a disclosure of confidential communicable disease related
15 information is made pursuant to a release, the disclosure shall be
16 accompanied by a statement in writing which warns that the information is
17 from confidential records which are protected by state law that prohibits
18 further disclosure of the information without the specific written consent
19 of the person to whom it pertains or as otherwise permitted by law.

20 H. The person making a disclosure pursuant to a release of
21 confidential communicable disease related information shall keep a record of
22 all disclosures. On request, a protected person or a protected person's
23 legal representative shall have access to the record.

24 I. A provider of a health service in possession of confidential
25 communicable disease related information relating to a recipient of its
26 service may disclose that information to an authorized employee or agent of
27 a federal, state or local government agency which supervises or monitors the
28 provider or administers the program under which the service is provided or
29 to the private entity that accredits the provider. An authorized employee
30 or agent includes only an employee or agent who, in the ordinary course of
31 business of the government agency or entity, has access to records relating
32 to the care or treatment of the protected person. The information shall not
33 disclose the protected person's name.

34 J. This section does not prohibit the listing of communicable disease
35 related information, including acquired immune deficiency syndrome,
36 HIV-related illness or HIV infection, in a certificate of death, autopsy
37 report or other related document prepared pursuant to law to document the
38 cause of death. This section does not modify a law or rule relating to
39 access to death certificates, autopsy reports or other related documents.

40 K. If a person in possession of confidential HIV-related information
41 reasonably believes that an identifiable third party is at risk of HIV
42 infection that person may report that risk to the department. The report
43 shall be in writing and include the name and address of the identifiable
44 third party and the name and address of the person making the report. The
45 department shall contact the person at risk pursuant to rules adopted by the

1. department. The department employee making the initial contact shall have
2 expertise in counseling persons who have been exposed to or tested positive
3 for HIV or acquired immune deficiency syndrome.

4 L. Except as otherwise provided pursuant to this article or subject
5 to an order or search warrant issued pursuant to section 36-665, a person who
6 receives confidential HIV-related information in the course of providing a
7 health service or pursuant to a release of confidential HIV-related
8 information shall not disclose that information to another person or legal
9 entity or be compelled by subpoena, order, search warrant or other judicial
10 process to disclose that information to another person or legal entity.

11 M. Nothing in this section or sections 36-663, 36-666, 36-667 and
12 36-668 shall apply to persons or entities subject to regulation under title
13 20.

APPROVED BY THE GOVERNOR APRIL 26, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2004.



Passed the House March 9, 2004

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Jake Flake
Speaker of the House

Gorman L. Moore
Chief Clerk of the House

Passed the Senate April 7, 2004

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Klu Bennett
President of the Senate

Charmine Ballington
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State


H.B. 2438

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 20, 2004,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting



Speaker of the House
Ex Tempore
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20th day of April, 2004.

at 12:23 o'clock P. M.

Jennifer Lybark
Secretary to the Governor

Approved this 26 day of

April, 2004,

at 9⁰⁰ o'clock A. M.

J. R. Nagel
Governor of Arizona

H.B. 2438

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 26 day of April, 2004.

at 12:34 o'clock P. M.

Janice K. Brewer
Secretary of State